



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

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Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-2750

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 110942.

The Texas Department of Public Safety (the "department") received requests from six bulk distributors for a magnetic tape of personal information contained in the department's driver license database. You state that the department does not currently have the programming capabilities necessary to allow it to provide the requested information on magnetic tape according to the specifications set out in the Motor Vehicle Records Disclosure Act, chapter 730 of the Transportation Code.¹ You contend that the requested information should be excepted from disclosure under sections 552.101 and 552.130 of the Government Code until such time as the department has the required programming in place.

You explain the steps that the department is taking to implement the Motor Vehicle Records Disclosure Act:

Pursuant to this new law, the Department is affording all Texans the opportunity to make their personal information private. Also pursuant to the new law, all Texans are offered a choice in the level of privacy applied to their personal information. Based upon Section 730.009 of the Transportation

¹We note that the Motor Vehicle Records Disclosure Act was enacted as section 1 of S.B. 1069. Act of May 29, 1997, S.B. 1069, § 1, 75th Leg., R.S. A Travis County district court has issued a temporary injunction enjoining the enforcement of sections 2 and 13 of S.B. 1069. *Texas Daily Newspaper Association, et al., v. Morales, et al.*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). However, sections 2 and 13 of S.B. 1069 are not relevant to the issues addressed in this informal letter ruling.

Code, the Department distinguishes between a driver's request to prohibit the general public's access to personal information and a request to prohibit a bulk distributor's access to personal information. In order to do this, the Department is offering all driver's [sic] three forms of privacy: (A) prohibit the general public's access to personal information but release to any requestor who meets one of the fourteen exceptions listed in Chapter 730, TRC; (B) prohibit bulk distributors' access to personal information but release to all other requestors; or (C) prohibit the general public and bulk distributors from accessing the personal information but release to requestors who meet one of the remaining thirteen exceptions.

...

[I]f a driver chooses privacy option B or C, the bulk distribution exception will not reach the personal information on that record. The Department is in the process of obtaining computer programming that will identify the different privacy options and produce magnetic tapes with only the names for which the particular requestor would qualify. Until that programming is in place, however, there is currently no way to distinguish between privacy option A and privacy option B or C when loading names to the magnetic tape.

It is our understanding that the only way the department could comply with the pending requests is by providing the requestors with a magnetic tape of its entire driver license database, including the personal information of those Texans who have chosen privacy options B and C. However, complying with the requests in this way would require the department to contravene section 730.004 of the Transportation Code, which provides as follows:

Notwithstanding any other provision of law to the contrary, including Chapter 552, Government Code, except as provided by Sections 730.005-730.008, an agency may not disclose personal information about any person obtained by the agency in connection with a motor vehicle record.

Transp. Code § 730.004. Under the present circumstances, we conclude that section 730.004 prevents the department from complying with the bulk distributors' requests for personal information on magnetic tape, since the department cannot provide the requested information in compliance with sections 730.005-730.008 of the Transportation Code.

Nevertheless, we believe that the Open Records Act imposes two obligations on the department with respect to the bulk distributors' requests. First, the department must comply with section 552.228 of the Government Code. Section 552.228 of the Government Code provides in pertinent part:

(b) If public information exists in an electronic or magnetic medium, the requestor may request a copy either on paper or in an electronic medium,

such as on diskette or on magnetic tape. A governmental body shall provide a copy in the requested medium if:

(1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;

(2) the governmental body is not required to purchase any software or hardware to accommodate the request; and

(3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

(c) If a governmental body is unable to comply with a request to produce a copy of information for any of the reasons described by this section, the governmental body shall provide a paper copy of the requested information or a copy in another medium that is acceptable to the requestor. A governmental body is not required to copy information onto a diskette or other material provided by the requestor but may use its own supplies.

Gov't Code § 552.228. Pursuant to section 552.228, the department must inform the requestors as to whether it is able to provide the requested information, segregated according to privacy options, in any medium other than magnetic tape. Of course, the department need not provide the information in the alternative medium unless the alternative is acceptable to the requestors.

Second, section 552.231 of the Government Code provides that when a governmental body is unable to comply with a request that requires programming or manipulation of data, the governmental body must provide the requestor with a written statement that includes the following:

(1) a statement that the information is not available in the requested form;

(2) a description of the form in which the information is available;

(3) a description of any contract or services that would be required to provide the information in the requested form;

(4) a statement of the estimated cost of providing the information in the requested form as determined in accordance with the rules established by the General Services Commission under Section 552.262;² and

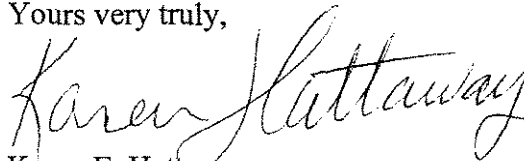
²We note that section 730.011 of the Transportation Code allows an agency that has obtained information in connection with a motor vehicle record to adopt reasonable fees for disclosure of personal information under chapter

(5) a statement of the anticipated time required to provide the information in the requested form.

Gov't Code § 552.231(b) (footnote added). Section 552.231 of the Government Code is applicable to the circumstances presented here. Thus, we conclude that the department must provide the requestors with a written statement that complies with section 552.231.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
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Open Records Division

KEH/ch

Ref: ID# 110942

Enclosure: Submitted documents

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